

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

CHERI WHITE, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

Case No. 02-4154-CV-C-NKL

DANA KATHERINE MARTIN, as the
Director of the Missouri Department of Social
Services, DENISE CROSS, as the Director of
the Missouri Division of Family Services, and
GREGORY VADNER, as the Director of the
Missouri Division of Medical
Services,

Defendants

ORDER

Before the Court is Plaintiffs' Motion for a Preliminary Injunction requiring defendants to provide transitional Medicaid, including notice of their right to receive transitional Medicaid, to all people in the State of Missouri who have received Medicaid for at least three of the six months immediately prior to their termination from Medicaid as of July 1, 2002, who but for the amount of their countable earned income in relation to the new lower MAF eligibility limit adopted by Missouri would continue to be eligible to receive Medicaid after July 1, 2002, and who have not been or will not be afforded the transitional Medicaid assistance benefits provided for in 42 U.S.C. § 1396r-6.

A. Background

Plaintiff brought this action for declaratory and injunctive relief under 42 U.S.C. § 1983, on

behalf of herself and a class of needy Missouri parents and other caretaker relatives, challenging defendants' failure to provide temporary Medicaid assistance (TMA) to parents and caretaker relatives in families with earnings that caused their income to be over the defendants' newly-adopted Medicaid eligibility limit of 77 % of the federal poverty level (FPL). Plaintiffs allege that the defendants' conduct violates 42 U.S.C. § 1396r-6(a)(1), which requires the provision of TMA to any person who received Medicaid in at least three of the six months immediately preceding the month in which s(he) becomes ineligible for Medicaid because of income from employment, as well as 42 U.S.C. § 1396(a)(8) and 42 C.F.R. § 435.930(b), which require Defendants to engage in *ex parte* determinations regarding eligibility for TMA, before discontinuing plaintiff and plaintiff class members' Medicaid benefits.

On July 25, 2002, this Court heard argument on plaintiff's motion for a temporary restraining order and ordered defendants to provide TMA to plaintiff Cheri White. Minute Entry Dated July 25, 2002. On July 26, the Court heard argument on plaintiff's motion for class certification and then entered an Order certifying a class of:

all people in the State of Missouri who have received Medicaid for at least three of the six months immediately prior to their termination from Medicaid as of July 1, 2002, who but for the amount of their countable earned income would continue to be eligible to receive Medicaid after July 1, 2002, and who have not been or will not be afforded the transitional Medicaid assistance benefits provided for in 42 U.S.C. § 1396r-6. The class does not include any Missouri resident who is already receiving Medicaid benefits or has already qualified to receive Medicaid benefits on some basis other than transitional eligibility.

July 26, 2002 Order (hereinafter, July 26 Order) at 8.

It has since been determined that, of the approximately 25,000 individuals whose Medicaid benefits the defendants discontinued effective July 1, 2002, following implementation of the new

eligibility limit, approximately 17,051 are members of the class certified in this case.

The Court's July 26 Order also instructed the defendants to provide TMA benefits to the class members "forthwith," (Order at 8) and directed the parties to expedite discovery and briefing in order for plaintiffs' motion for a preliminary injunction to be heard on August 16, 2002.

On August 16, 2002, after all parties submitted full briefing and proposed Findings of Fact and Conclusions of Law, argument was heard on plaintiffs' motion for a preliminary injunction and defendants' oral motion to decertify the class. This court on that date denied defendants' motion to decertify the class, finding that the class had been properly certified, and granted plaintiffs' motion for a preliminary injunction as to the granting of TMA to the plaintiff class.

The Court now makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

A. Facts Regarding Plaintiff White

1. Plaintiff Cheri White is forty years old and resides at 535 Blanche Drive in St. Charles, Missouri, with her three-year old daughter, Hannah, and her seven-year old daughter, Cassidy. White Affidavit, ¶ 1; JS ¶ 1.

2. Plaintiff White suffers from severe insulin-dependent diabetes which requires two separate daily insulin shots; she also suffers from anemia and an underactive thyroid, conditions which require additional prescription medications; as well as clinical depression for which she is required to take Prozac. JS ¶ 10.

3. Plaintiff White estimates that the monthly cost of her prescription medication is \$ 405.00. JS ¶ 15.

4. Plaintiff White fears that if she is not able to take her medications as prescribed,

particularly her insulin, her condition will deteriorate to such a degree that it will threaten not only her ability to maintain her job, but also her life. JS ¶ 17.

5. Plaintiff White's sole source of income is the \$1299 gross monthly income that she earns as an office manager at a small plumbing company that does not provide her with health insurance. JS ¶ 11.

6. Plaintiff White does not possess any of the characteristics, such as being disabled, blind or pregnant, that the defendants listed as providing a possible basis for Medicaid eligibility in a category other than Medical Assistance to Families (MAF) or Transitional Medicaid Assistance (TMA). JS ¶ 11-14.

7. Plaintiff White received Section 1931 Medicaid, known as Medical Assistance for Families (MAF) in Missouri, for at least three of the six months immediately prior to July 2002. JS ¶ 2.

8. Plaintiff White, but for the amount of her earned income in relationship to the new Medical Assistance for Families (MAF) eligibility limit, would be eligible to receive Medicaid benefits under Missouri's MAF category. JS ¶ 3.

9. Defendants sent Plaintiff White a June 10, 2002 notice informing her that, effective July 1, 2002, she would no longer be eligible for MAF coverage because income information on file for her family indicated that her income was above the 77% of the federal poverty level limit. JS ¶

10. The June 10, 2002 notice sent by Defendants to Plaintiff White did not mention Transitional Medical Assistance (TMA). Joint Stipulation of Exhibits (J Ex.) 1.

11. Plaintiff White on June 20, 2002, made an application for an administrative hearing

to challenge the defendants' decision to end her MAF coverage because her income was over 77% of the federal poverty level limit. JS ¶ 6.

12. Ms. White's hearing request was categorized by the defendants as one in which the "change in law" was the sole reason for the request. J Ex. 2.

13. On the date of the scheduled administrative hearing, Plaintiff White did not appear because she was sick. JS ¶ 7.

14. Plaintiff White's appeal was dismissed when she did not appear at the hearing. JS ¶ 9(a).

15. Plaintiff White's MAF benefits were terminated as of July 1, 2002. JS ¶ 8.

16. Plaintiff filed suit on July 22, 2002, and service of the complaint was accomplished on July 24. JS ¶ 9(b) and (c).

17. On July 25, defendants *sua sponte* scheduled an administrative hearing for Ms. White for July 26. JS ¶ 9(d).

18. On July 25, 2002, this Court ordered the defendants to provide TMA benefits to Ms. White. Court docket, July 25, 2002 entry.

19. On July 26, 2002, defendants reinstated plaintiff White to MAF eligibility prior to 5:00 p.m., CDT, and between 12:30 a.m. and 2:00 a.m., on July 27, 2002, defendants made effective plaintiff White's MAF eligibility. JS ¶ 9(f).

B. Facts Regarding the Defendants' Implementation of the Reduction in the Eligibility Limit for MAF from 100% to 77% of the Federal Poverty Level

20. Because of the MAF income limit reduction to 77% of the federal poverty level, on July 1, 2002, defendants terminated the MAF benefits of approximately 25,000 people who had been receiving MAF benefits before July 1, 2002. JS ¶ 52.

21. After July 26, 2002, defendants determined that approximately 17,051 of the 25,000 people they had terminated were coded in their records as having earned income in June of 2002, as having received MAF in at least three of the six months before July 1, 2002, and as not receiving any other category of Medicaid. JS ¶ 53.

22. The defendants did not offer or provide TMA, as described in 42 U.S.C. § 1396r-6, to Plaintiff White or to the approximately 17,051 class members upon termination of their MAF benefits. JS ¶ 54.

23. The defendants do not intend, absent a continuing order from this Court, to offer or provide TMA either to Plaintiff White or to the approximately 17,051 class members. JS ¶ 53.

C. Costs to the State of Missouri of Providing Transitional Medical Assistance

24. The estimated cost to the State of Missouri of providing TMA benefits to the approximately 17,051 class members for the first six months of state fiscal year 2003 is approximately \$5,751,561. JS ¶ 59(b).

25. The estimated cost to the State of Missouri of providing TMA to the approximately 11,083 people who the state expects will continue to receive TMA benefits during the second six months of state fiscal year 2003 is approximately \$3,738,515. JS ¶ 60(b).

26. In addition to the one year of TMA benefits provided for in 42 U.S.C. § 1396r-6, Missouri provides an additional one year of Extended TMA benefits under its Medicaid program, for which the federal government reimburses the state at the same rate as for other Medicaid expenditures made by the state in that particular year. JS ¶¶ 57 and 61.

27. The estimated cost to the State of Missouri of providing Extended TMA benefits to the approximately 8,312 people who the state expects will continue to receive Extended TMA benefits during state fiscal year 2004 is approximately \$5,607,772, assuming, as the parties

anticipate, that the percentage of the federal contribution is similar to that listed in 2003. JS ¶ 61.

28. a) The total estimated cost of providing TMA and Extended TMA benefits over a two year period will be approximately \$38,901,952, of which the federal government is expected to pay slightly more than 60 per cent. JS ¶ 62.

CONCLUSIONS OF LAW

I. DEFENDANTS SHOULD BE PRELIMINARILY ENJOINED FROM DENYING TRANSITIONAL MEDICAL ASSISTANCE BENEFITS TO PLAINTIFF AND PLAINTIFF CLASS MEMBERS

29. Preliminary injunctive relief is warranted when plaintiffs can demonstrate (1) a threat of irreparable harm; (2) a likelihood of success on the merits; (3) that the balance between the harm to them and the harm to the defendant tips in their favor; and (4) that the injunction is in the public interest. *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (*en banc*), followed by *Randolph v. Rogers*, 170 F.3d 850, 857 (8th Cir. 1999).

A. Plaintiffs Will Suffer Irreparable Harm.

30. The Eighth Circuit has stated that irreparable harm is injury for which a monetary award is not adequate compensation. *Baker Elec. Co-op. v. Chaske*, 28 F.3d 1466, 1473 (8th Cir. 1994).

31. In the Eighth Circuit the loss of Medicaid and other public assistance benefits is understood to constitute irreparable harm. *Harris v. Blue Cross Blue Shield of Missouri*, 995 F.2d 877, 879 (8th Cir. 1993); *Nemnich v. Stangler*, 1992 WL 178963 (W.D. Mo. 1992) (enjoining the state from eliminating several categories of dental treatment). *See also, Massachusetts Ass'n of Older Americans v. Sharp*, 700 F.2d 749, 753 (1st Cir. 1983) (inability to acquire needed medications and treatment when Medicaid improperly terminated); *Kansas Hosp. Ass'n v.*

Whiteman, 835 F.Supp. 1548, 1552 (D. Kan. 1993) (enjoining increase in Medicaid co-payment).

B. The Plaintiffs Have Demonstrated a Likelihood of Success on the Merits.

32. Medicaid is a jointly funded state and federal program that provides medical services to low-income persons pursuant to Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.*

33. State participation in the Medicaid program is optional. However, a state choosing to participate, and thereby receive federal matching funds for its Medicaid program, must comply with the requirements of the federal Medicaid Act and the regulations governing state Medicaid programs promulgated by the U.S. Department of Health and Human Services (HHS). *See Schweiker v. Gray Panthers*, 453 U.S. 34, 37 (1981); *Arkansas Medical Society v. Reynolds*, 6 F.3d 519, 522 (8th Cir. 1993) (States are not required to participate in the Medicaid program, but if they do, they must comply with the requirement of the Medicaid Act and its regulations).

34. As a condition of participating in the federal Medicaid program, a state must submit to HHS a state Medicaid plan that fulfills the requirements of the Act. 42 U.S.C. § 1396a(a).

35. One provision that every state Medicaid plan is required to contain relates to the extension of eligibility for medical benefits for certain families who would otherwise lose benefits “because of hours of, or income from, employment of the caretaker relative . . .” 42 U.S.C. §

1396r-6(a)(1). The relevant language of this section of the Act provides:

Notwithstanding any other provision of this title, each State plan approved under this title must provide that each family which was receiving aid [under Medicaid] . . . in at least 3 of the 6 months immediately preceding the month in which such family becomes ineligible for such aid, because of hours of, or income from, employment of the caretaker relative . . . shall, . . . without any reapplication for benefits under the plan, remain eligible for assistance . . . during the immediately succeeding 6-month period in accordance with this subsection.

36. The State is also required to notify each family described above of its right to

transitional Medicaid and of the circumstances under which such extension may be terminated. 42 U.S.C. § 1396r-6(a)(2)(A).

37. The Personal Responsibility and Work Opportunity Act (PRA) of 1996 established a new Medicaid eligibility group for low-income families that would have qualified for the old Aid to Families with Dependent Children (AFDC) program had that program not been eliminated by the PRA. This category of eligibility is known as Section 1931 Medicaid, after the section of the Social Security Act that creates it. In Missouri, Section 1931 Medicaid is known as Medical Assistance for Families (MAF).

1. This Court Has Jurisdiction to Enforce the Medicaid Act Provisions at Issue

38. Defendants, citing to *Gonzaga University v. Doe*, 122 S.Ct. 2268 (2002), suggest that plaintiffs do not state a cause of action under the Medicaid Act for which this Court can grant relief for two reasons. First, defendants argue that the 42 U.S.C. §§ 1396a(a)(8) and 1396r-6 are not sufficiently unambiguous to support a cause of action. Second, defendants contend that the Missouri's pre-termination procedural fair hearing scheme precludes an action under 42 U.S.C. § 1983.

39. This Court will address each argument in turn. In *Gonzaga*, the Supreme Court articulated that for an action to lie under § 1983, Congress must have intended to create a right to be enforced by individual beneficiaries. However, “[o]nce a plaintiff demonstrates that a statute confers an individual right, the right is presumptively enforceable by § 1983.” *Gonzaga*, at 2275-76.

40. The *Gonzaga* Court further opined “[W]e must first determine whether Congress *intended to create a federal right* [emphasis in opinion]. . . . For a statute to create such private rights, its text must be ‘phrased in terms of the persons benefitted’.” *Cannon v. University of*

Chicago, 441 U.S. 677, 692, n. 13 (1979). *Id.*

41. Two Eighth Circuit decisions have found that 42 U.S.C. § 1396a confers enforceable rights on individual recipients of Medicaid. In *Pediatric Speciality Care, Inc. v. Arkansas Dep't of Human Servs.*, 293 F.3d 472 (8th Cir. 2002), the Eighth Circuit affirmed a district court ruling that plaintiffs, beneficiaries of Medicaid services under the early and periodic screening, diagnosis, and treatment (“EPSDT”) program could challenge cutbacks in state Medicaid services and held that “the language in § 1396a is mandatory language.” 293 F. 3d at 478.

42. Similarly, in *Arkansas Medical Soc’y*, 6 F.3d at 519 (8th Cir. 1993), the Eighth Circuit found § 1396a set forth “an unambiguous statutory obligation for states participating in the Medicaid program.” 819 F.Supp. at 822. The statute is clearly phrased in terms of the persons benefitted. *See Gonzaga*, 122 S.Ct. at 2275. The statute does not have an aggregate focus but rather an individual focus.

a. 42 U.S.C. § 1396a(a)(8)

43. 42 U.S.C. § 1396a(a)(8), declares that the defendants must “provide that . . . such [Medical] assistance shall be furnished with reasonable promptness to *all eligible individuals.*” (Emphasis added.) The provision has repeatedly been found to give a Medicaid recipient the right to pursue action under § 1983. *See Doe v. Chiles*, 136 F.3d 709, 719 (11th Cir. 1998); *Blanchard v. Forrest*, 1994 WL 495857, at *25 (E.D. La. 1994), *aff’d*, 71 F.3d 1163 (5th Cir. 1996); *Sobky v. Smoley*, 855 F.Supp. 1123, 1146-47 (E.D. Cal. 1994); *Wellington v. District of Columbia*, 851 F.Supp. 1, 5 (D. D.C. 1994); *Cook v. Barry*, 718 F.Supp. 632, 636, 638 (S.D. Ohio 1989) (plaintiffs could use § 1983 to bring claimed violations of the Social Security Act; these violations included 42 U.S.C. § 1396a(a)(8) & 42 C.F.R. § 433.912).

b. Section 1396r-6

44. This Court is not aware of any cases that directly address whether 42 U.S.C. § 1396r-6 is enforceable under 42 U.S.C. § 1983. However, a careful reading of the statute reveals that it passes muster under *Gonzaga*.

45. In relevant portion, § 1396r-6 provides that the State must provide that each family which was receiving aid [under Medicaid] . . . in at least 3 of the 6 months immediately preceding the month in which such family becomes ineligible for such aid, because of hours of, or income from, employment of the caretaker relative . . . shall, . . .without any reapplication for benefits under the plan, remain eligible for assistance . . . during the immediately succeeding 6-month period in accordance with this subsection.

46. In § 1396r-6, as with § 1396a, Congress has spoken in mandatory and unambiguous terms to confer a specific benefit on a particular group of people. If a family which has been receiving Medicaid meets certain eligibility requirements, the State *must* provide transitional Medicaid. Moreover, the right asserted is no less clear because the benefit in question is transitional Medicaid made available to a current recipient as opposed to initial Medicaid made available to an applicant.

c. Missouri's Administrative Review Scheme

47. Defendants suggest that Missouri's pre-termination procedural due process scheme under the Medicaid Act deprives this Court of subject matter jurisdiction.

48. The *Gonzaga* court did not address whether the administrative review mechanism in the statute under review was sufficiently comprehensive to offer an independent basis for precluding enforcement since it had already determined no right to have been created. *Gonzaga*, 122 S.Ct. at 2279. However, for such a remedial scheme to preclude enforcement, the "express remedies [must] demonstrate not only that Congress intended to foreclose implied private actions

but also that it intended to supplant any remedy that otherwise would be available under § 1983.” *Middlesex County Sewerage Auth. v. National Sea Clammers Ass’n*, 453 U.S. 1, 21 (1981).

49. Moreover, the Supreme Court has specifically found that the Medicaid Act hearing rights are not the type of comprehensive federal review that would evince a Congressional intent to create no enforceable right under § 1983. *Gonzaga*, 122 S.Ct. at 2279. *See also Wilder*, 496 U.S. at 522. (“This administrative scheme cannot be considered sufficiently comprehensive to demonstrate a congressional intent to withdraw the private remedy of § 1983.”)

2. Defendants Failure to Provide TMA Violates the Medicaid Act

50. The Eighth Circuit has already determined, in a similar case, that the statutes and implementing regulations in question unambiguously were intended to benefit plaintiffs. *Phillips v. Noot*, 728 F.2d 1175 (8th Cir 1984), Subsequent to that decision, the relevant federal law has been amended, on two separate occasions, in a manner that removes any doubt that *Phillips* was correctly decided.

51. In *Phillips*, the Eighth Circuit was called upon to decide whether certain families were entitled to extended Medicaid coverage under 42 U.S.C. § 1396a(e)(1), the predecessor statute to section 1396r-6.¹ The language of section 1396a(e) varies from that of section 1396r-6. It provided that TMA must be afforded to any family that has received benefits for three of the six months before the month in which the family “became ineligible for such aid because of *increased* hours of, or *increased* income from, employment . . .” (emphasis added).

52. As in the current case, the families losing benefits in *Phillips* had not experienced

¹Subsection (e)(1) has not been repealed, but its application has been suspended for the period between April, 1990, when section 1396r-6 became effective, and October 1, 2002, when the latter section will expire pursuant to a sunset clause, if it is not extended by Congress before then. See 42 U.S.C. § 1396a(e)(2).

an actual increase in their gross income from employment. Rather, the manner in which the state measured income for the program had changed, so that the families experienced an increase in their countable income from employment.

53. The *Phillips* court found that one intent of Congress was to protect recipients from a precipitous loss of medical coverage due to their employment earnings and concluded that providing TMA when those earnings, although unchanged, suddenly rendered a family ineligible for ongoing Medicaid was the outcome most consistent with Congressional intent. *Phillips*, at 1177-1178.

54. Congress, in enacting section 1396r-6, eliminated any doubt that the *Phillips* court had correctly discerned its intent by deleting the requirement of section 1396a(e)(1) that the loss of eligibility that triggers TMA be the result of an *increase* in earnings from employment. Now, under section 1396r-6(a)(1), TMA is triggered simply if the loss of eligibility for benefits is because of “earnings from employment.”

55. Further confirmation of the availability of TMA in the circumstances of this case is found in Congress’ enactment in 1996 of the very provision that authorizes Missouri to offer its MAF category of assistance, 42 U.S.C. § 1396u-1. Congress there specifically allowed the States to roll back eligibility limits for this category of Medicaid, 1396u-1(b)(2)(A), but simultaneously instructed that people losing assistance “because of hours or income from employment” be afforded TMA.

56. The changes in statutory language must be viewed as an intentional, affirmative action by Congress. See *Brown v. Gardner*, 513 U.S. 115, 120, 115 S.Ct. 552, 556, 130 L.Ed.2d 462 (1994) (citing *Russello v. United States*, 464 U.S. 16, 104 S.Ct. 296, 300, 78 L.Ed.2d 17 (1983)):

Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.²

C. The plaintiffs have demonstrated that the balance of harms tips decidedly in their favor

57. Compliance with the law does not pose a burden on a defendant. *Haskins v. Stanton*, 794 F.2d 1273, 1277 (7th Cir. 1986) (granting preliminary injunction requiring defendant's compliance with federal timeliness standards for processing food stamp applications). *See also, Massachusetts Ass'n of Older Americans v. Sharp*, 700 F.2d 749, 754 (1st Cir. 1983) (In light of the strong likelihood that plaintiffs would prevail on the merits, “[d]efendant's claimed injury from the loss of public funds to ineligible individuals is, in reality, no injury at all, just a remote possibility of injury.”); *Illinois Hosp. Ass'n v. Illinois Dep't of Pub. Aid*, 576 F.Supp. 360, 371 (N.D. Ill. 1983) (“Once a state has voluntarily elected to participate in the Medicaid program, . . . [it cannot] characterize its duty to comply with the requirements of [the program] as constituting a hardship to its citizens.”).

58. In the Eighth Circuit, budgetary harm to a state in delaying Medicaid changes has been found “not very significant in comparison to the irreparable harm that would be caused [to hospitals] and individual Medicaid beneficiaries. . . . The state is in a much better position to

²Defendants contend that the legislative history suggests otherwise. However, when the import of words Congress has used is clear, courts should not resort to legislative history to undermine the plain meaning of the statutory language. *U.S. v. Gonzales*, 520 U.S. 1, 6 (1997) (“Given the straightforward statutory command, there is no reason to resort to legislative history.”); *Barnhill v. Johnson*, 503 U.S. 393, 401 (1992) (“[A]ppeals to statutory history are well taken only to resolve statutory ambiguity.”); *Harris v. Garner*, 216 F.3d 970, 976 (11th Cir. 2000) (en banc) (“When the import of words Congress has used is clear, as it is here, we need not resort to legislative history, and we certainly should not do so to undermine the plain meaning of the statutory language.”). Once this Court finds that the statute is sufficiently unambiguous to pass a *Blessing* test, there is no need to resort to the legislative history.

absorb the budgetary impact of delayed implementation of the amendment as compared to individual plaintiffs.” *Kansas Hosp. Ass’n*, 835 F.Supp. at 1553.³ Changing Medicaid coverage “significantly alters the status quo to the detriment of the individual plaintiffs, while its positive budgetary impact on state coffers is negligible in a relative sense.” 835 F.Supp. at 1553. *See also Clarinda Home Health v. Shalala*, 1996 WL 211799 at 2 (S.D. Ia. 1996) (finding provider’s interest in staying in business outweighed government’s interest in protecting integrity of Medicaid program and inability to recoup overpayments).

D. The Injunction Is in the Public Interest

59. Enforcement of laws passed by Congress is in the public interest, even when that means enjoining allegedly illegal actions by another government body. *Glenwood Bridge, Inc. v. City of Minneapolis*, 940 F.2d 367, 372 (8th Cir. 1991). Indeed, in *Nemnich*, the court specifically found that “Congress and the Missouri General Assembly expressed the public interest by enacting the Medicaid program in the first place.” 1992 WL 178963 at 2. *See also Heather K. v. City of Mallard, Iowa*, 887 F.Supp. 1249, 1263 (N.D. Ia. 1995) (finding public interest expressed by federal legislation).

60. “While achieving budgetary savings is also in the public interest of state and federal taxpayers, that interest must give way if it is in conflict with federal substantive law.” *Kansas Hosp. Ass’n*, 835 F.Supp. at 1553.

61. On the evidence available before it, this Court determines that the defendants have

³The cost to the State of Missouri of providing TMA to plaintiff class members would be a total of approximately \$14,821,643.71, over two years (JS ¶ 60-63), not the \$40,197,468 previously represented by defendants (*See* affidavit of Brian Kinkade). While this is a substantial burden given the budget crisis in the state, the likelihood that the class will succeed on the merits of its claim is very strong.

not demonstrated that they will, absent a continuing Order from this Court, comply with federal statutory mandates concerning the provision of TMA benefits at issue and grants Plaintiffs' request for Preliminary Injunction.

II. CERTIFICATION OF THE PROPOSED CLASS

A. The Class Is So Numerous That Joinder of All Members Is Impracticable

62. Fed. R. Civ. P. 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” Several factors are relevant to this inquiry, “the most obvious of which is, of course, the number of persons in the proposed class.” *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 559 (8th Cir. 1982).

63. There are no “arbitrary rules regarding the necessary size of classes,” *Paxton*, 688 F.2d at 559, but “courts generally follow the rule of thumb that a class of over 40 persons is sufficiently ‘numerous’ for Rule 23 purposes.” *Richter v. Bowen*, 669 F.Supp. 275, 281 (N.D. Ia. 1987); *see, e.g., Bradford v. AGCO Corp.*, 187 F.R.D. 600 (W.D. Mo. 1999) (certifying class of 20-65); *Fielder v. Credit Acceptance Corp.*, 175 F.R.D. 313, 319 (W.D. Mo. 1997) (certifying class of 120-160).

64. In this case, the parties have stipulated that the class as certified by this Court in its Order of July 26, 2002, contains over 17,000 people, rendering their joinder in this action totally impracticable.

B. There Are Questions of Law and Fact Common to the Plaintiff Class.

65. Fed. R. Civ. P. 23(a)(2) requires that there be questions of law or fact common to the class. Not every question of law or fact needs to be common to all class members. The commonality requirement may be satisfied “where the question of law linking the class members is

substantially related to the resolution of the litigation even though the individuals are not identically situated.” *Paxton*, 688 F.2d at 561, quoting *American Finance Sys., Inc. v. Harlow*, 65 F.R.D. 94, 107 (D. Md. 1974).

66. Here, the named plaintiff and all class members raise the very same issue of law, namely whether they are eligible for TMA benefits following a termination from MAF benefits under the circumstances presented in this case. In addition, all of the material facts as to each class member are the same. All have earned income; all received MAF benefits in at least three of the six months immediately before July 1, 2002; all were terminated from MAF after Missouri lowered its eligibility level for that program because their income placed them above the new eligibility limit; and all have not been found eligible by Missouri for any other category of Medicaid assistance other than TMA. In these circumstances, any individual factual differences among the class members do not defeat commonality.

C. The Claims of the Named Plaintiff Are Typical of the Claims of the Plaintiff Class.

67. Fed. R. Civ. P. 23(a)(3) requires that the claims of the class representative be typical of the class claims. This requirement is satisfied “if the claims or defenses of the representatives and the members of the class stem from a single event or are based on the same legal or remedial theory.” *Paxton*, 688 F.2d at 561-2, citing *WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURES*, § 1764, n. 21.1 (Supp. 1982).

68. Plaintiff must demonstrate “that there are other members of the class who have the same or similar grievances.” 688 F.2d at 562. This burden is “fairly easily met so long as other class members have claims similar to the named plaintiff.” *DeBoer*, 64 F.3d at 1174.

69. In this case, plaintiff White’s claim is entirely typical of those of the class. She was terminated from MAF at the same time and for the same reason as all other class members, and has

the same claim to eligibility for TMA benefits. Defendants' contention that the plaintiff claim is atypical because she did not attend the administrative hearing that defendants scheduled for her *sua sponte* upon learning of this suit is unsupported by the applicable law. Plaintiffs are not required to exhaust administrative remedies in a § 1983 action such as this one. *Patsy v. Florida Bd. of Regents*, 457 U.S. 496 (1982); *Planned Parenthood v. Atchison*, 126 F.3d 1042 (8th Cir. 1997); *L&H Sanitation, Inc. v. Lake City Sanitation, Inc.*, 769 F.2d 517 (8th Cir. 1985). Further, exhaustion in this case would be futile, as the facts to which the defendants have stipulated demonstrate that the plaintiff would not be eligible for any category of Medicaid that the defendants offer, other than TMA.

D. The Named Plaintiffs Will Fairly and Adequately Protect the Interests of the Class.

70. Fed. R. Civ. P. 23(a)(4) allows a class action to be maintained if the named plaintiffs fairly and adequately protect the interests of the class. There is a two-pronged test for satisfying this rule: (1) The class representative must have "common interests with the members of the class" and (2) the class representative must "vigorously prosecute the interests of the class through qualified counsel." *Paxton*, 688 F.2d at 562-3. The named plaintiff meets both elements.

71. "In the absence of proof to the contrary, courts presume that class counsel is competent and sufficiently experienced to vigorously prosecute the class action." *Morgan*, 169 F.R.D. at 357.

72. On the evidence available before it, this Court determines that the proposed class satisfies the requirements of the Fed. R. Civ. P. Rules 23(a) and 23(b) and because class certification is essential to the fair and efficient adjudication of this controversy, plaintiff's motion for class certification is granted.

Accordingly, for good cause shown, it is hereby

ORDERED that defendants' motion to decertify the class is DENIED; and it is further

ORDERED that plaintiffs' motion for a preliminary injunction requiring that defendants provide TMA to all class members, including Plaintiff White, is GRANTED; and it is further

ORDERED that defendants shall forthwith continue the TMA of all class members for whom TMA was provided in compliance with this Court's Orders of July 25 and July 26; and it is further

ORDERED that defendants have the affirmative obligation to conduct an ex parte review to ensure that all persons entitled to receive TMA are in fact enrolled as ordered by this Court. It is further

ORDERED, that bond be set at \$10.00.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: October 3, 2002
Kansas City, Missouri