

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**

Pending before the Court is Plaintiff's Motion for Class Certification and Class Wide Temporary Relief requesting that defendants be ordered to provide transitional Medicaid benefits to all Missouri residents with earnings who were receiving Medicaid benefits in at least three of the six months immediately preceding July 2002, and who, but, for the fact that their income is over seventy-seven percent of the federal poverty level would continue to be eligible to receive Medicaid after July 1, 2002.

**I. Background**

Effective July 1, 2002, Missouri reduced the net income limit for parents receiving Medical

Assistance for Families (“MAF”) from one hundred percent of the federal poverty level to 77 % of the federal poverty level. The reduction in the income limit has resulted in approximately 25,000 parents and caretaker relatives losing Medicaid benefits.

Plaintiff contends, *inter alia*, that defendants are in violation of 42 U.S.C. § 1396r-6(a)(1), which requires the provision of transitional Medicaid benefits to any person that received Medicaid in at least three of the six months immediately preceding the month in which such person became ineligible for Medicaid because of income from employment. Plaintiff further contends that the defendants actions violate 42 U.S.C. § 1396(a)(8), implemented by 42 C.F.R. § 435.930(b), which prohibits the termination of Medicaid benefits when the recipient becomes ineligible for one category of Medicaid, without first determining that the recipient is not eligible for any alternate category of Medicaid.

## **II. Governing Standards**

### **A. Class Certification**

Rule 23(a) of the Federal Rules of Civil Procedure provides in relevant part, that “one or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.” *See also Paxton v. Union Nat’l Bank*, 688 F.2d 552, 559 (8<sup>th</sup> Cir. 1982). Rule 23(b)(2) further provides in relevant part that “an action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition . . . (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate

final injunctive relief or corresponding declaratory relief with respect to the class as a whole.”

### **B. Temporary Injunctive Relief**

Rule 65 of the Federal Rules of Civil Procedure provides for the issuance of preliminary injunctions and temporary restraining orders. The party seeking preliminary relief must demonstrate (1) the threat of irreparable harm to the movant; (2) a likelihood of success on the merits; (3) that the balance between the harm to the plaintiff and the harm to the defendant tips decidedly in favor of the plaintiffs; and (4) the injunction is in the public interest. *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109, 114 (8<sup>th</sup> Cir. 1981) (*en banc*), followed by *Randolph v. Rogers*, 170 F.3d 850, 857 (8<sup>th</sup> Cir. 1999).

## **III. Discussion**

### **A. Class Certification**

Plaintiffs seek to certify a class of

all people in 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.

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. Iowa. 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). Plaintiff is not required to “specify an exact number or prove the identity of each class member,” but must only “show a reasonable estimate of the number of class members.” *Morgan v. United Parcel*

*Serv. of America, Inc.*, 169 F.R.D. 349, 355 (E.D.Mo. 1996).

Here, the parties cannot state with precision the exact size of the class. Defendants argue, and plaintiff does not dispute, that the class is somewhat smaller than the total number of persons who lost Medical assistance on July 1, 2002. Some undetermined percentage of those individuals are not eligible for TMA because, *inter alia*, they have not received Medicaid for at least three of the six months prior to July 1, 2002 or because they do not have income from earnings. However, defendants possess the information necessary to determine which of those persons terminated from assistance fit within the proposed class. Therefore, inasmuch as “it is administratively feasible to determine whether a given individual is a member of the class,” the class is not indeterminate. *In re Tetracycline Cases*, 107 F.R.D. 719 (W.D. Mo. 1985).

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). The claims of plaintiffs in this case are far more linked than that of plaintiffs in *Paxton*, where the alleged bad acts took place at different times and in different ways. Each class member alleges that he or she has been or will be unlawfully denied TMA and each alleges he or she is having Medicaid benefits terminated without the required *ex parte* determination of eligibility. Each class member has an interest in the declaration and injunction sought by the plaintiff. By extension, the typicality requirement is met. The grievances and legal theories underlying these claims are identical for both the named plaintiff and the class. The declaratory and injunctive remedies sought are identical for both the named plaintiff and the class.

The class representative will adequately protect the interests of the class. She has “common interests with the members of the class” and she will “vigorously prosecute the interests of the class

through qualified counsel.” *Paxton*, 688 F.2d at 562-3. Plaintiff’s counsel will fairly and adequately protect the interests of the class in this action.

The proposed class meets the Fed. R. Civ. P. Rule 23(b)(2) criteria. First, the defendants’ conduct or failure to act is “generally applicable to the class,” and second, final injunctive or corresponding declaratory relief is requested for the class as a whole. When the Rule 23(a) requirements “have been met and injunctive or declaratory relief [is] requested, “the action usually should be allowed to proceed under subdivision (b)(2).” *DeBoer v. Mellon Mortgage Co.*, 64 F.3d 1171, 1175 (8<sup>th</sup> Cir. 1995). This rule has often been “the basis for class certification in other cases challenging the policies or procedures of governmental agencies.” *Liquist v. Bowen*, 633 F. Supp. 846, 860 (W.D. Mo. 1986) (listing cases).

#### **B. Injunctive Relief**

This Court finds that plaintiff has satisfied the standard for issuance of a temporary restraining order requiring defendants to provide transitional Medicaid benefits as required by federal law. Those benefits shall be made to all Missouri residents with earnings who were receiving Medicaid benefits in at least three of the six months immediately preceding July 2002, and who, but, for the fact that their income is over seventy-seven percent of the federal poverty level would continue to be eligible to receive Medicaid after July 1, 2002. The transitional benefits need not be paid to any Missouri resident who is already receiving or has already been qualified to receive Medicaid benefits on some basis other than transitional eligibility.

Plaintiffs have demonstrated a likelihood of success on the merits. 42 U.S.C. section 1396r-6(a)(1) provides in relevant part that

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.

Defendants urge that this provision should be read as requiring the provision of transitional Medicaid benefits only when there has been an increase in the income of the beneficiary. However, such a ruling would be contrary to the plain language of the statute, which explicitly deletes the requirement of the predecessor statute, section 1396a(e)(1), that the loss of eligibility that triggers TMA be the result of an *increase* in earnings from employment. The Eighth Circuit has previously held that eligibility for transitional Medicaid Assistance does not hinge on a change in the beneficiary's income. *See Phillips v. Noot*, 728 F.2d 1175 (8<sup>th</sup> Cir 1984) (Providing TMA when those earnings, although unchanged, suddenly rendered a family ineligible for ongoing Medicaid was the outcome most consistent with Congressional intent).

Plaintiff satisfies the other requirement for the issuance of temporary injunctive relief. In this 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 (8<sup>th</sup> Cir. 1993); *Nemnich v. Stangler*, 1992 WL 178963 (W.D.Mo. 1992).

The balance of hardships tip decidedly in favor of plaintiff and plaintiff class members. Ms. White and others similarly situated have suffered and will suffer the loss of medical benefits necessary for their very health and safety. In contrast, “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.” *Illinois Hosp. Ass’n v. Illinois Dep’t of Pub. Aid*, 576 F. Supp. 360, 371 (N.D. Ill. 1983).

Moreover, while this Court is mindful of the financial impact to the State of its ruling, 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 absorb the budgetary impact of delayed implementation of the amendment as compared to individual plaintiffs.” *Kansas Hosp. Ass’n v. Whiteman*, 835 F.Supp. 1548, 1553 (D. Kan. 1993). 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.” *Id.* See also *Nemnich v. Stangler*, 1992 WL 178963 (W.D.Mo. 1992).

Finally, Plaintiff, seeking to enforce federal law, satisfies the requirement that the injunction sought be in the public interest. As this circuit has noted, 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 (8<sup>th</sup> Cir. 1991).

In determining to grant relief, this Courts must consider whether to require a bond. Fed.R.Civ.P. 65(c). However, the Eighth Circuit allows its District Courts a great deal of discretion in deciding whether to require bond or how much to require. It will not find error in the amount of a bond, only in a District Court’s failure to consider the question. *Rathmann Group v. Tanenbaum*, 889 F.2d 787, 789 (8<sup>th</sup> Cir. 1989).

Exercising this discretion, this Court declines to set bond since plaintiff, an indigent, is proceeding to protect constitutional or statutory rights. *Nemnich*, 1992 WL 178963, \*4 (setting bond at one dollar, where plaintiffs sought to enjoin Medicaid changes); *Heather K. v. City of Mallard, Iowa*, 887 F.Supp 1249, 1268 (N.D. Iowa. 1995) (waiving bond in suit enjoining city from allowing open burning).

Accordingly, for good cause shown, it is hereby

ORDERED that Plaintiff's motion for class certification is GRANTED and a class is certified consisting of

all people in 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.

And it is further,

ORDERED that defendants forthwith provide transitional Medicaid benefits to all Missouri residents with earnings who were receiving Medicaid benefits in at least three of the six months immediately preceding July 2002, and who, but, for the fact that their income is over seventy-seven percent of the federal poverty level would continue to be eligible to receive Medicaid after July 1, 2002. The ordered transitional benefits need not be paid to any Missouri resident who is already receiving Medicaid benefits or has already qualified to receive Medicaid benefits on some basis other than transitional eligibility. It is further

ORDERED that a hearing is set on Plaintiff's request for a preliminary injunction on August 16, 2002, at 1:00 p.m. It is further

ORDERED that the parties are directed to provide a proposed scheduling order to the Court no later than July 30, 2002.

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

Date: July 26, 2002, 5:15 p.m.  
Kansas City, Missouri