

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

MELISSA WILSON)
)
v.) NO. 3-14-1492
) JUDGE CAMPBELL
DARIN GORDON, et al.)

CLASS CERTIFICATION ORDER

Pending before the Court is the Plaintiffs' Motion for Class Certification (Docket No. 2). The Court held a hearing on Plaintiffs' Motion on August 29, 2014. Plaintiffs' Motion for Class Certification is GRANTED on the terms set forth herein.

INTRODUCTION

As explained in the Preliminary Injunction Order entered contemporaneously herewith, Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 seeking declaratory and injunctive relief against the Defendants, who are State of Tennessee officials, for alleged violations of federal law and the Due Process Clause of the Fourteenth Amendment. Plaintiffs' claims arise from the State's Medicaid program (TennCare) and the State's responsibilities in administering that program.

Plaintiffs ask the Court to certify a class consisting of "all individuals who have applied for TennCare on or after October 1, 2013, who have not received a final eligibility determination in a timely manner, and who have contacted the Tennessee Health Connection or its successor entity for assistance with that application." Docket No. 2.

CLASS CERTIFICATION

In order to certify a class, the Court must be satisfied that Plaintiffs have met the requirements of both Rule 23(a) and Rule 23(b) of the Federal Rules of Civil Procedure. Rule 23(a)

to meet the requirements of Rule 23(a). In other words, there must be a nexus between the class representative's claims or defenses and the common questions of law or fact which unite the class.

capable of repetition, yet evading review. *Ability Center of Greater Toledo v. Lumpkin*, 808 F.Supp.2d 1003, 1011 (N.D. Ohio 2011). Where class certification has been diligently pursued and Defendants have “picked off” the

Genesis Healthcare Corp. v. Symczyk, 133 S.Ct. 1523, 1531 (2013). Some claims are so inherently transitory that the trial court does not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires. *Gawry v. Countrywide Home Loans, Inc.*, 2010 WL 3245542 at ** 6 (6th Cir. Aug. 13, 2010) (citing *Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991)). In such cases, the relation back doctrine is properly invoked to preserve the merits of the case for judicial resolution. *Id.*

For these reasons and for purposes of class certification, to the extent the named Plaintiffs' claims are considered moot, they should be considered as an exception to the mootness doctrine and relate back to the filing of the Complaint. The Court finds that the typicality and adequate representation requirements have been met.

The Supreme Court case cited by Defendants, *Genesis Healthcare Corp. v. Symczyk*, 133 S.Ct. 1523 (2013), is distinguishable. That case was a Fair Labor Standards Act ("FLSA") case, and the Court expressly noted that Rule 23 actions are fundamentally different from FLSA collective actions. The plaintiff in *Genesis* had not moved for conditional certification when her claim became moot; Plaintiffs here filed their class certification motion before their claims allegedly became moot. Moreover, the defendant in *Genesis* made a Rule 68 offer of judgment in full satisfaction of the plaintiff's alleged damages, fees and costs. Here, the Plaintiffs seek injunctive relief, and no offer of judgment has been made. In addition, the Supreme Court found that because the plaintiff in *Genesis* was offered full and complete relief, she had no continuing interest which would preserve

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Plaintiffs assert that this class should be certified under Fed. R. Civ. P. 23(b)(2) because Defendants acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole. Plaintiffs seek declaratory and injunctive relief for the class as a whole.

Given that (1) Plaintiffs' claims arise from the same acts or refusals to act by Defendants; (2) the final declaratory and injunctive relief sought apply to the class as a whole, not individually; and (3) Plaintiffs' claim for injunctive relief predominates over any claim for damages, the Court finds that Plaintiffs have met the requirements of Rule 23(b)(2).⁴

Definition of the Class

The Court finds that the class definition proposed by Plaintiffs is not sufficiently concise. Accordingly, the Court will certify the following class:

All individuals who have applied for Medicaid (TennCare) on or after October 1, 2013, who have not received a final eligibility determination in 45 days (or in the case of disability applicants, 90 days), and who have not been given the opportunity for a "fair hearing" by the State Defendants after these time periods have run.

Pursuant to Rule 23(b)(2), the Court "may" direct that appropriate notice be given to the class. In this case, the Court finds that no such notice is required.


CONCLUSION

For all these reasons, Plaintiffs' Motion for Class Certification (Docket No. 2) is GRANTED. Accordingly, in compliance with Fed. R. Civ. P. 23(b)(2), the Court certifies a class of all individuals who have applied for Medicaid (TennCare) on or after October 1, 2013, who have not received a final eligibility determination in 45 days (or in the case of disability applicants, 90

days), and who have not been given the opportunity for a “fair hearing” by the State Defendants after these time periods have run.

In addition, the Court appoints the attorneys of record from the Tennessee Justice Center, the Southern Poverty Law Center and the National Health Law Program as class counsel.

IT IS SO ORDERED.



TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE