IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

T.B. by and through his parents THOMAS BOYCE and MARGARET BOYCE, et. al., individually and on behalf of a class,	)	
Plaintiffs,	)	
	)	No. 12-5356
vs.	)	
	)	Judge: Robert W. Gettleman
JULIE HAMOS, in her official capacity as Director of the Illinois Department of Healthcare and Family Services,	)	Magistrate: Sidney I. Schenkier
Defendant.	)	

PLAINTIFFS' REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Now comes the Plaintiffs' by and through their attorneys, Robert H. Farley, Jr., Ltd., Cahill & Associates, and Michelle N. Schneiderheinze, and files this Reply to Defendant's Response to Plaintiffs' Motion for Class Certification, as follows:

I. This Court Should Not Defer Plaintiffs' Motion For Class Certification.

The Defendant's argument that "the Court should defer the Motion for Class Certification because to do so is not prejudicial to the parties" is frivolous. (Def. Resp. at page 3). As previously noted by this Court, "the temporary extension of the current MF/TD waiver will continue through November 29, 2012." (Doc. 28, p. 2 - Order of October 23, 2012). This Court further stated:

> The potential harm that plaintiffs face is not abstract. . . The time line in question is short. Plaintiffs need not wait for their funding to expire on November 30th to have standing; that injury is imminent and plaintiffs may seek the appropriate preventative relief.

(*Id.* p. 5).

* * *

. . . the November 29, 2012, deadline rapidly approaches. Plaintiffs still face the imminent threat of the alleged reduction in services. *(Id.* p. 6).

This Court has scheduled a hearing on November 26, 2012 on Plaintiffs' Motion for a Temporary Restraining Order. (Doc. 29). Plaintiffs' request for a TRO will not provide a benefit for the putative class unless this Court rules on the Motion for Class Certification. The putative class will be prejudiced if this Court defers ruling on class certification and the waiver is permitted to expire on November 30, 2012.

If the waiver expires on November 30, 2012, then there is no program in place which waives parental income for children to qualify for skilled nursing services. With an expired waiver, the only way a medically fragile child can now obtain skilled nursing services, would be if the parental income was low enough to qualify for Medicaid.[1] With the expiration of the waiver, then the Plaintiffs and Class will have no program in place as noted by the Defendant which "allow[s] them to remain in their homes rather than being placed in institutional care." (See Doc. 21 - Exhibit "A" at Plaintiffs Reply to Defendant's Response to Plaintiffs Motion for a Temporary Restraining Order).

The Defendant fails to cite to any legal authority which provides that class certification should be deferred unless the parties can demonstrate prejudice. The Seventh Circuit has emphasized Rule 23(c)(1)'s requirement that a certification order issue "[a]t an early practicable

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[1] "Only children whose family income is under 300% Federal Poverty Level (about $55,600) for a family of 3) will qualify" for the All Kids Program in Illinois. See Doc. 21 - Exhibit "B" at Plaintiffs Reply to Defendant's Response to Plaintiffs Motion for a Temporary Restraining Order - E-news from HFS - June, 2011. See also, 215 ILCS 170/20(a)(3.5).

time after a person sues" in a case brought by developmentally disabled applicants against various state officials for failure to provide Medicaid waiver services. *See Bertrand ex rel. Bertrand v. Maram,* 495 F.3d 452, 455 (7th Cir. 2007) (noting that decisions on class certification must be made before a decision on the merits to avoid mootness, to allow opportunity for interlocutory review, and to allow for informed decisions about how discovery and briefing should proceed).

Accordingly, for the above reasons, the issue of class certification should not be deferred.

II. Plaintiffs' Claims Are Appropriate For Class Treatment.

The Defendant's reliance on *Jamie S. V. Milwaukee Public Schools,* 668 F.3d 481 (7th Cir. 2012) to support a global argument that various statutes creates rights or remedies for individuals, thereby negating any class action treatment is without merit. (Def. Resp. at 5-6).

In *Jamie S,* the Circuit Court followed prior Circuit Court precedent in *Adashunas v. Negley,* 626 F.2d 600 (7th Cir. 1980) and held in *Jamie S.* that "a class of unidentified but potentially IDEA-eligible disabled students is inherently too indefinite to be certified." *Id.* at *11. *Jamie S.* permits class treatment in IDEA cases if the class can be easily identified. In *Jamie S.* the Circuit Court stated:

> If we could easily identify all Milwaukee students with disabilities during the relevant time period, perhaps we could crosscheck that list against a list of known disabled students to determine which students MPS failed to identify and refer for an IEP exception. *Id.* at *13.

In the instant case, the Plaintiffs claims are appropriate for class treatment as noted below.

A. EPSDT Cases Are Appropriate For Class Treatment.

The Defendant's argument that "[t]he provisions of Title XIX [EPSDT] cited do not impose any liability on Defendant for their breach" is simply frivolous. (Def. Resp. at p. 7). In almost every case involving Medicaid eligible persons challenging the State's noncompliance with either the procedural or substantive provisions of the Medicaid Act, courts have certified a class. *Alexander v. Choate,* 469 U.S. 287 (1985); *Herweg v. Ray,* 455 U.S. 265 (1982); *Blum v. Yaretsky,* 457 U.S. 991 (1982). This is particularly true for children eligible for EPSDT services. *See e.g. Katie A., ex rel. V. Los Angeles County,* 481 F.3d 1150 (9th Cir. 2007); *Rosie D. v. Patrick,* 497 F.Supp.2d 76 (D. Mass. 2007); *Memisovski v. Maram,* 2004 U.S.Dist. LEXIS 16722, *5-6 (N.D. Ill. 2004 (J. Lefkow); *Risinger v. C oncannon,* 201 F.R.D. 16 (D. Me. 2001); *Emily G. v. Bonta,* 208 F.Supp.2d 1078 (C.D. Cal. 2001); *John B. v. Menke,* 176 F.Supp.2d 786 (M.D. Tenn. 2001); *Chisholm v. Hood,* 133 F.Supp.2d 894 (E.D. La. 2001) *aff'd* 391 F.3d 581 (5th Cir. 2004); *J.K. ex rel. R.K. v. Dillenberg,* 836 F.Supp. 694 (D. Ariz. 1993). This strong and consistent line of decisions addressing violations of children's rights under Title XIX of the Social Security Act ("Medicaid Act"), 42 U.S.C. Sec. 1396a *et. seq.* supports class certification.

1. Seventh Circuit Has Affirmed Permanent Injunctive Relief On Behalf Of The Class When A State Violates EPSDT.

The Seventh Circuit has affirmed the District Court granting permanent injunctive relief to the class when a state violates EPSDT. (See *Stanton v. Bond*, 504 F.2d 1246, 1251 (7th Cir. 1974) (affirming the district court where the "court enjoined defendants 'from continuing to administer EPSDT in violation of 42 U.S.C., Section 1396d(a)(4)(B) and the regulations established thereunder' and ordered defendants to have a program meeting the minium standards

of, and in substantial compliance with, the regulations and guidelines, 'in effect in every county in Indiana by July 1, 1974.'"); (See *Collins v. Hamilton,* 349 F.3d 371, 372, 376 (7th Cir. 2003) (affirming the district court where the court "permanently enjoined Indiana from denying Medicaid coverage for psychiatric residential treatment for all Medicaid-eligible children under the age of twenty-one when such treatment is found to be 'medically necessary' by an EPSDT screening.").

2. Circuit Courts and District Courts Have Granted Injunctive Relief In EPSDT Cases.

Other Courts have likewise granted injunctive relief to the class in EPSDT cases. See *Katie A. v. Los Angeles County,* 481 F.3d 1150, 1162 (9th Cir. 2007) ("Requiring the State actually to provide EPSDT services that have been found to be medically necessary is consistent with the language of the Medicaid Act, which requires that each state plan 'provide for . . . arranging for (directly or through referral to appropriate agencies, organizations, or individuals) corrective Treatment the need for which is disclosed by such child health screening services. . . ." 42 U.S.C. Sec. 1396a(a)(43)") See also; *Parents' League for Effective Autism Services v. Jones-Kelly*, 2009 U.S. App. LEXIS 16637 (6th Cir. 2009); *Rosie D. v. Romney,* 410 F.Supp.2d 18, 54 (D. Mass. 2006); *A.M.T. v. Gargano,* 2011 U.S. Dist. LEXIS 13304, *27-29 (S.D. Ind. 2011); *Emily Q. v. Bonta,* 208 F.Supp.2d 1078, 1086-87 (C.D. Ca. 2001).

B. Plaintiffs' ADA & Rehabilitation Act Claims Are Suitable For Class Treatment.

The Defendant's argument that "[n]either Title II of the ADA nor the Rehabilitation Act recognizes or remediates 'systemic' or 'per se' violations of the statutes" is baseless. (Def. Resp. at p. 7). The class action is an appropriate mechanism for achieving relief for violations of Title

II in the community integration context. Integration claims typically involve large service systems that affect hundreds or thousands of individuals who rely on the state for their medical care. Courts have routinely granted class certification in ADA cases and specifically in *Olmstead* cases.[2] The class action is therefore a useful and necessary tool for addressing such systemic problems. The alternative — forcing individual plaintiffs, who are by virtue of their membership in the class, without resources to litigate independently to pursue individual complaints — is an unfair and inefficient use of judicial resources.[3]

The Defendant incorrectly argues that Title II of the ADA is not suitable for class treatment because "this Court would be called upon to determine, through an individualized hearing, not only whether discrimination occurred, but also whether the alleged discrimination was unlawful. (Def. Resp. at p. 8)

The Defendant's reliance on *Hohider v. United Parcel Service, Inc.* 574 F.3d 169 (3rd Cir. 2009) is unpersuasive as *Hohider* concerned Title I of the ADA and the Circuit Court found that

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[2] See *Ball et al v. Rodgers*, 492 F.3d 1094 (9th Cir. 2007); *Frederick L. v. Dept. of Public Welfare*, 364 F.3d 487 (3d Cir. 2004); *State of Connecticut Office of Protection and Advocacy v. Connecticut*, 2010 WL 1416146 (D. Conn. 2010); *Messier v. Southbury Training School*, 562 F. Supp. 2d 294 (D. Conn. 2008); *Rolland v. Patrick*, 2008 WL 4104488 (D. Mass. Aug. 19, 2008); *Colbert v. Blagojevich,* 2008 U.S. Dist. LEXIS 75102 (N.D. Ill. 2008); *Williams v. Quinn,* 2006 U.S. Dist. LEXIS 83537 (N.D. Ill 2006).

[3] For instance, in *Williams*, Judge Hart certified a class of Illinois residents alleging Title II violations who a) have a mental illness; b) are institutionalized in a privately owned Institution for Mental Diseases; and c) with appropriate supports and services may be able to live in an integrated setting. *Williams*, 2006 U.S. Dist. LEXIS 83537, at *15-16. The Court determined that class certification was appropriate because, as in this case, "defendant's conduct toward the class largely defines the class." *Id.* at *14. In *Colbert,* Judge Lefkow certified a class of "all Medicaid-eligible adults with disabilities in Cook County, Illinois, who are being, or may in the future be, unnecessarily confined to nursing facilities and who, with appropriate supports and services, may be able to live in a community setting." *Colbert*, 2008 U.S. Dist. LEXIS 75102, at *28.

in an employment discrimination case, class certification is not appropriate where an inquiry was required for 'a qualified individual with a disability' to prove that he or she 'with or without reasonable accommodation, can perform the essential functions' of [their] job." *Id.* at 191. In *Hampe v. Hamos,* 2010 U.S. Dist. LEXIS 125858 (N.D. Ill.), the District Court rejected the same argument made by the same defendant. The District Court stated:

> The Defendant argues that a threshold statutory issue — whether the prospective class members are qualified individuals within the meaning of the ADA and Rehabilitation Act — poses individualized questions that require individualized fact-finding. In support, DHFS relies primarily on the Third Circuit's holding in *Hohider v. United Parcel Serv., Inc.,* 574 3rd Cir. 2009). . .
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> Defendant's argument is a red herring. The Defendant is correct that the ADA prohibits discrimination only against qualified individuals with disabilities. Putting aside the question of whether *Hohider's* reasoning is persuasive, the Court is not convinced that even if the court were to conduct an individualized inquiry into whether class members were qualified individuals that such an inquiry would "negate the very benefits Rule 23" confers. Def. Resp. at 13. (fn. omitted)
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> The statute defines qualified individuals as disabled individuals who "with or without reasonable modifications to rules, policies, or practices . . . . mee[t] the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. Sec. 12131(2). The proposed class definition, however, includes only persons who are receiving or have or will receive services under the MF/TD Program. In that sense, the prospective class members receipt of services under the MF/TD Program demonstrates that he or she meets the essential eligibility requirements for the receipt of services or participation in the MF/TD Program. . . *Id.,* *10-12.

In the instant case, the proposed class definition, includes medically fragile and technology dependent children who are either enrolled or seek enrollment in the two programs serving medically fragile children (MF/TD) and (PDN), and as to those persons currently enrolled demonstrate that he or she meets the essential eligibility requirements for the receipt of

services and is a qualified individual with a disability.[4]

The Defendant's argument that the "Plaintiffs do not allege what [discriminatory] 'policy or practice' Defendant maintains in reference to the named Plaintiffs and putative class" is without merit. (Def. Resp. at p. 9). "The Plaintiffs have brought this action to enjoin the policy and/or practices of the Defendant to either eliminate or reduce the Medicaid benefits of medically fragile children in the MF/TD Waiver and in the Private Duty Nursing (PDN) program." (Plts. Memo in support of Class Certif. at p. 3). The Plaintiffs have stated in their Complaint at par. 6 the following:

> The Plaintiffs' and Class are at risk of institutionalization because of the following changes to both the State Medicaid Plan and MF/TD Waiver.
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> A) All Medical Fragile Children Are Now Limited To A Nursing Facility Level Of Care Rate As Opposed To A Hospital Level of Care Rate Which Will Reduce Their Level Of In-Home Funding By Approximately 50% Even Though Their Medical Needs Remain Unchanged Which Will Force The Children To Be Institutionalized At A Yearly Cost To The State Up To $660,000.
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> B) Illinois Excludes All Medically Fragile Children With Parental Incomes Exceeding 500% ($95,450 for a family of 3) Of The Federal Poverty Rate For Home and Community-Based Services Even Though The Family Will Be Unable To Pay The Average Yearly Cost Of $188,000 For In-Home Service And Other Services Which Will Force The Child To Be Institutionalized At A Yearly Cost Of $660,000 Per Child.
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> C) Illinois Imposes Cost Sharing or Co Pays On Children With Parental Incomes Exceeding 150% ($28,635 for a family of 3) Of The Federal Poverty Rate For Home and Community-Based Services Which Violates Federal Law and Which Places The Child At Risk of Institutionalization.

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[4] As to those persons seeking enrollment in the program, those persons would also be required to meet the essential eligibility of the two programs as they exist before any of the Defendant's proposed changes as to co-pays, income limits as to eligibility and as to reducing the level of care from a hospital to a nursing facility.

Accordingly, Plaintiffs' claims are suitable for class treatment.

III. Class Definition Is Appropriate.

The Defendant's argument that "the class definition proffered is vague and requires individualized fact-finding in order to determine membership in the class" is without merit. (Def. Resp. at p. 10). No individualized fact-finding is required in order to determine membership in the class as the Defendant has already identified which persons are "medically fragile and technology dependent." The Defendant, the Illinois Department of Healthcare and Family Services, has stated in June, 2012, the following:

> **Currently, [Illinois] serves medically fragile and technology dependent children in two different ways:** approximately 550 children are served by the Medically Fragile, Technology Dependent Waiver ("MFTD Waiver") and approximately 500 other technology dependent children under Medicaid, who receive in-home services but do not meet the institutional level of care to qualify for services under the MFTD Waiver.[5] (emphasis added)

The Defendant has also prepared a "Fact Sheet" for both programs for fiscal year 2010 which reflects that 622 were enrolled in the MF/TD Waiver and 527 persons were enrolled in the Private Duty Nursing (PDN) Services for Children.[6] For the Defendant to argue that "[i]f children are receiving in-home private duty nursing services and not in MF/TD, there is no way to tell if they are also 'medically fragile and technology dependent' without an individualized inquiry into their unique circumstances based on expert opinion evidence" is frivolous given that

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[5] See Exhibit "A" at Plts. Motion for Class Certification - HFS - "Questions and Answers on the Medicaid Program for Medically Fragile and Technology Dependent Children" at No. 2. (See also: www2.illinois.gov/hfs/agency/Pages/MFTD.aspx)

[6] See Exhibits "B" at Plts. Motion for Class Certification - www.hfs.illinois.gov/assets/ccmn_mftd_hcbs_factsheet.pdf and See Exhibit "C" at Plts. Motion for Class Certification - www.hfs.illinois.gov/assets/ccmn_pdn_factsheet.pdf

the Defendant has in place a process to identify medically fragile children and in fact identified 527 persons enrolled in the PDN Services for Children as noted in the Defendant's "Fact Sheet" which describes the program. Moreover, for the Defendant to claim that she "disputes that any such program exists" as to Private Duty Nursing (PDN) for medically fragile children is simply ludicrious. (Def. Resp. at p. 10). The Defendant has prepared and issued two "Fact Sheets" which describe the MF/TD Waiver program for children under age 21 (See Plts. Exhibit "A" at Motion for Class Certification) and which describes the "Private Duty Nursing (PDN) Services for Children under age 21" program. (See Plts. Exhibit "B" at Motion for Class Certirfication).

IV. Plaintiffs Have Satisfied the Prerequisites Pursuant to Rule 23(a)

A. Numerosity

The Defendant does not challenge numerosity as to those persons enrolled in the MF/TD Waiver. (Def. Resp. at p. 12). The Defendant's objection as to numerosity for those persons enrolled in the Private Duty Nursing (PDN) program is baseless as the Plaintiffs have referenced the Defendant's own documents and web site which reflects that as of June, 2012 there are approximately 500 persons enrolled in the PDN program[7] and in fiscal year 2010 there were 527 persons enrolled in the PDN program.[8] Accordingly, Plaintiffs have satisfied numerosity.

B. Commonality

The Defendant's argument that the "Plaintiffs' claims are not based on a common nucleus

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[7] See Exhibit "A" at Plts. Motion for Class Certification - HFS - "Questions and Answers on the Medicaid Program for Medically Fragile and Technology Dependent Children" at No. 2. (See also: www2.illinois.gov/hfs/agency/Pages/MFTD.aspx)

[8] See Exhibit "C" at Plts. Motion for Class Certification - www.hfs.illinois.gov/assets/ccmn_pdn_factsheet.pdf

of operative fact" and that the "individualized nature of proof of each class member's claim will defeat commonality" is without merit. (Def. Resp. at p. 12). The Defendant's reliance on *Wal-Mart Stores, Inc. v. Dukes* __ U.S.__, 131 S.Ct. 2541 (2011) is not persuasive. (Def. Resp. at page 12). In *Connor B. v. Patrick,* 2011 U.S. Dist. LEXIS 130444, *2-3 (D. Mass.), the District Court declined to decertify the plaintiff class, consisting of "all children who are now or will be in the foster care custody of the Massachusetts Department of Children and Families as a result of abuse or neglect," after the decision in *Wal-Mart.* The District Court stated:

> Plaintiffs allege that overarching systemic deficiencies within DCF expose approximately 8,500 children in DCF custody, as well as children who will be in DCF custody in the future, to potential harm. . . . The six named representatives suffered alleged harms as a result of these deficiencies, which Plaintiffs claim are representative of the harms faced by all children in DCF custody. *Id.,* *4.
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> Unlike the plaintiffs in Wal-Mart, who did not allege any specific, overarching policy of discrimination, Plaintiffs have alleged specific and overarching systemic deficiencies within DCF that place children at risk of harm. . . Thus, this class of 8,500 children within the custody of a single agency in a single state that suffers from the same overarching systemic deficiencies is fundamentally different from the class in Wal-Mart, which consisted of one and a half million class members spread out across the country in thousands of stores with varying regional policies. . . Here Plaintiffs' claimed injuries result from the common alleged deficiencies in the Texas foster care system. *Id.,* *13-14.

In *N.B. v. Hamos,* 2012 U.S. Dist. LEXIS 74284, *31 (N.D. Ill), the District Court rejected this defendant's argument that *Wal-Mart* changes the analysis of class certification in cases challenging a state policy or practice. In *N.B.* at *31-32, the Court stated:

> But as the Seventh Circuit has recognized, the holding in *Dukes* does not apply where discrimination results from a defendant's standardized conduct toward proposed class members, such as generalized policies that affect all class members in the same way. *See McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* 672 F.3d 482, 487-490 (7th Cir. 2012)

In the instant case, the Defendant is being sued in her official capacity as Director of the Illinois Department of Healthcare and Family Services (HFS) and HFS is the single state agency responsible for administering the Medicaid program, which includes the MF/TD Waiver program EPSDT / PDN Nursing. (Compl. par. 30, 100, 103-118). Thus, in this case, there is one agency responsible for overseeing the Illinois Medicaid programs and the concerns raised by *Wal-Mart* are not present.

The Defendant's arguments that "the facts that prove whether the Plaintiff and class are entitled to relief are too individualized to admit of class treatment" and that there are differences among the Plaintiffs as some seek intensive residential services and some seek intensive community based services are without merit. (Def. Resp. at p. 13) The Plaintiffs are seeking intensive home and community-based services (residential or in-home supports) to avoid institutionalization / hospitalizations. The common fact is that the Plaintiffs have never received intensive home based and community-based services even though they have a medical need for such services. (Amd.Compl. at par. 54-55, 76-77, 93-94, 108-109, 123-124)

Even if there are differences in the individualized facts regarding class members' specific medical needs and the community supports they require do not bar class certification. *Rolland v. Patrick,* 2008 WL 4104488, *4 (D. Mass) ("any identified factual differences between the named Plaintiffs and some of the class. . . did not undermine commonality and, in particular, did not preclude certification of a class of persons with mental retardation who were challenging Defendants' practices.") Such factual differences can be addressed in the remedial phase. *Rolland,* 1999 WL 34815562, at *5 (D. Mass. 1999) (class certification was appropriate and "individualized determination of needs and services were more properly left for post-judgment

relief"); *Marisol A. v. Guilani,* 126 F.3d 372, 377 (2d Cir. 1997) (individual needs did not defeat commonality). Plaintiffs have therefore satisfied the commonality requirement.

C. Typicality

The Defendant's argument that Plaintiffs fail to establish typicality because any liability determination must rest on highly individualized applications of the law to the facts is without merit. (Def. Resp. at p. 14). The Plaintiffs are challenging three policies of the Defendant (cost sharing / co-pays; income eligibility and the level of care) which the Plaintiffs allege places the Plaintiffs and Class at risk of institutionalization. (Compl. par. 6, 7-20). In *Hampe v. Hamos,* 2010 U.S. Dist. LEXIS 125858, * 13-14 (N.D. Ill.), the District Court in certifying a class of medically fragile children, stated the following:

> Typicality can be satisfied even where there are factual distinctions between the named plaintiff's claim and the claims of other class members. *Muro v. Target Corp.,* 580 F.3d 485, 492 (7th Cir. 2009). . . The proposed class includes other individuals who will receive, are receiving or have received services under the MF/TD Program who will be subject to a reduction in Medicaid funding once they reach the age of 21. The Defendant raises the same red herring it raises in response to the Plaintiffs' argument on commonality, which remains unconvincing. The Court finds that Hampe's claims are typical of the claims of the proposed class. *Id.* *13-14.

Accordingly, Plaintiffs have satisfied typicality.

D. Adequacy of Representation

The Defendant admits that the Plaintiffs have satisfied adequacy of representation. (Def. Resp. at p. 14).

IV. Plaintiffs Have Satisfied The Requirements of Rule 23(b)(2)

The Defendant's argument that "[t]here is no 'indivisible nature' as to any final injunctive or declaratory relief" because "[a]ll named Plaintiffs and putative class members want individual

services" is without merit. (Def. Resp. at p. 15). Moreover, the Defendant admits "the Complaint does not specifically pray for individualized relief for each putative class member." (Def. Resp. at p. 5).

In the instant case, the Plaintiffs and Class are seeking a declaratory judgment that the Defendant's planned reduction or reduction or denying the Plaintiffs and Class members from their existing benefits of the MF/TD Waiver and Medicaid violates the ADA and RA and Medicaid. (Compl. at page 53 - par.(b)). Also, the Plaintiffs and Class are seeking injunctive relief to restore the level of Medicaid funding to maintain the existing medical services for the Plaintiffs and Class members in the MF/TD Waiver and Medicaid and that the Defendant be enjoined from reducing or denying the Plaintiffs and Class their existing benefits of the MF/TD Waiver and Medicaid. (Compl. at page 54 - par.(c)).

In *Hampe v. Hamos,* the District Court in certifying a class of medically fragile persons, stated:

> Although certification under Rule 23(b)(2) is not automatic merely because the plaintiffs seek only declaratory and injunctive relief, it is an appropriate device to remedy a state policy that treats the prospective class uniformly and presents common questions of law and fact. *See. e.g. Jefferson v. Intersoll Int'l Inc.,* 195 F.3d 894, 897-99 (7th Cir. 1999) (discussing the use of Rule 23(b)(2). . . .
> . . . Certification of the proposed class advances the Court's interest in judicial economy because it avoids the strain of repetitive, identical lawsuits, thus economizing the expense of litigation over the common issue of whether Defendant's policy to transition individuals from the MF/TD Program to the HSP at the age of 21 violates the ADA and the Rehabilitation Act.
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> The Court finds that the proposed class satisfies the requirements of Rule 23(b)(2). *Hampe* at *17-18.

In the instant case, the Plaintiffs have satisfied the requirements of Rule 23(b)(2).

V. Conclusion

Wherefore, for the foregoing reasons, the Plaintiffs respectfully request that this Court grant Plaintiffs Motion for Class Certification and certify the proposed class.

Respectfully submitted,

/s/ Robert H. Farley, Jr.
One of the Attorneys for
the Plaintiffs

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CERTIFICATE OF SERVICE

I, Robert H. Farley, Jr., one of the Attorneys for the Plaintiffs, deposes and states that he caused the foregoing Plaintiff's Reply to Defendant's Response to Plaintiffs' Motion for Class Certification to be served by electronically filing said document with the Clerk of the Court using the CM/ECF system, this 15th day of November, 2012.

/s/ Robert H. Farley, Jr.