

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

Stanley Ligas, et al.,)	
)	
Plaintiffs,)	
)	Case No. 05 C 4331
v.)	
)	Judge Sharon Johnson Coleman
Felicia Norwood, et al.,)	
)	
Defendants.)	

**EMERGENCY JOINT MOTION OF PLAINTIFFS AND INTERVENORS FOR ENTRY
OF RULE TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN
CONTEMPT OF COURT**

Plaintiffs and Intervenors, by their attorneys, pursuant to Federal Rule of Civil Procedure 70 and Northern District of Illinois Local Rules 37.1 and 77.2, ask that this Court find Defendant Felicia Norwood, Defendant James Dimas, and Illinois Comptroller Leslie Munger (hereinafter referred to as “the State”) in civil contempt of court based on their failure to comply with the Order entered by this Court on August 18, 2015 (Docket #610).

Introduction

More than 10,000 Medicaid-eligible people with developmental disabilities in Illinois depend on the State for their health and welfare. Many of these individuals cannot feed, clothe, or toilet themselves or administer critical medication needed on a daily basis. The providers of these essential services are completely dependent upon the funding of the State in order to remain in operation. If the State does not timely make the payments required by federal law and the orders entered in this case, numerous providers will immediately close their doors, and thousands of individuals with developmental disabilities will not receive services that are

essential to their survival. If any service providers are forced to close, then individuals in Illinois with Developmental Disabilities will be forced to relocate to unfamiliar and inappropriate settings, if such alternatives settings are even available

Here, the State has *twice* been ordered by this Court to comply with the Consent Decree entered in this case and to pay for services for Individuals with Developmental Disabilities, yet payments have not been made. It is inarguable that the State is in violation of multiple orders requiring it to make payments. It is inarguable that the situation is dire, as residents' lives literally hang in the balance. This is an emergency requiring the Court's immediate involvement. The State must account for its repeated and ongoing failure to comply with this Court's orders.

In support of their Motion, Plaintiffs and Intervenors state as follows:

1. The Defendant state officials, the Plaintiffs and the Intervenors entered a Consent Decree on June 15, 2011 (Docket #549) requiring the State of Illinois to fund services for Individuals with Developmental Disabilities (as defined in the Decree), without regard to the type of facility in which they choose to live. (A copy of the Decree is attached as Exhibit 1.)

2. When it became clear that the State of Illinois would not pass a budget appropriation for the State Fiscal Year beginning on July 1, 2015, the Illinois State Comptroller took the position that she would not continue to make the payments required by the Decree unless specifically ordered by the Court. As a result, this Court entered an Agreed Order on June 30, 2015, requiring that “[u]ntil the FY 2016 budget takes effect, the Comptroller shall continue to make all payments for all services, programs and personnel, at a level no less than the levels paid in Fiscal Year 2015, that are necessary to comply with the Consent Decree and Implementation Plans. This order shall remain in effect until the effective date of the FY 2016 budget.” (Docket #597) (the “Agreed Order”). (A copy of the Agreed Order is attached as Exhibit 2.)

3. Despite the June 30, 2015 Order, the State Comptroller continued to refuse to make the payments required by the Decree.

4. On August 6, 2015, Plaintiffs and Intervenors filed a joint motion to enforce the Consent Decree and Agreed Order in this case. (Docket #602) (A copy of the motion with exhibits is attached as Exhibit 3.) In support of their Motion, Plaintiffs and Intervenors submitted numerous affidavits of providers detailing their imminent closing in the event the State continued to fail to make the required payments and the devastating impact such closings would have on the Individuals with Developmental Disabilities they serve. (See Exhibits 4-10 and 12-14 of Exhibit 3 attached hereto.)

5. Defendants did not dispute their non-compliance with the Consent Decree or the Agreed Order. Nor did Defendants dispute any of the facts set forth in the affidavits establishing the imminent irreparable harm that would result from the State's continued non-compliance with its obligations under the Decree and Agreed Order.

6. On August 18, 2015, this Court entered an Order (Docket #610) requiring the State to pay for all services, programs, and personnel for Beneficiaries of the Consent Decree provided in July 2015 for which claims had been submitted as of the date of the Order, by August 21, 2015. The Order defined Beneficiaries of the Consent Decree to include those living in Community Integrated Living Arrangements ("CILAs"), those living in Intermediate Care Facilities for the Developmentally Disabled ("ICF-DDs"), those living in Community-Based Settings, and those living at home but in need of Community-Based Services (as those terms are defined in the Consent Decree). (A copy of the August 18 Order is attached as Exhibit 4.)

7. Despite this Court's Order, the State did not make the required payments by August 21, 2015. In fact, it is now August 25, 2015, and all of the mandated payments still have not been paid.

8. Counsel for Plaintiffs and Intervenors contacted counsel for the State on Friday, August 21. Counsel for the State acknowledged that the Comptroller had not made the payments required by the August 18 Order. He could not explain why, nor could he say when payments would be made. Counsel for Plaintiffs and Intervenors asked counsel for the State to call them over the weekend as he learned more information. They also requested that counsel for the State call them Monday morning. Counsel for the State did not contact counsel over the weekend or Monday morning. Late Monday, August 24, counsel for the State finally called and advised that some payments for providers on the expedited payment program would begin that evening, but he could not say when all expedited payments under that program would be made. As for the other payments required to have been made by August 21, including payments for other Beneficiaries of the Consent Decree, Counsel for the State simply said that those payments would not be made in accordance with the Order and he had no idea when the payments would be made. Counsel for Plaintiffs and Intervenors also requested that counsel for the State provide in writing which providers the State was paying and when, but no such written confirmation has been provided. Thus, the State has still not provided a date for when it will comply with all of its overdue obligations under this Court's orders.

9. According to the website for the State of Illinois Comptroller, <http://ledger.Illinoiscomptroller.com>, yesterday, August 24, 2015, the Comptroller paid bills and issued warrants totaling over \$243,000,000 from the General Revenue Fund, but did not pay the claims required by this Court's August 18, 2015 order. The website also shows that at the end of

the day yesterday, the General Revenue Fund still had over \$70,000,000, yet the Comptroller did not pay the claims required by the Order.

10. A contempt petition may be granted when the movant shows by clear and convincing evidence that the respondent has violated an express and unequivocal command of a court order. *Lightspeed Media Corp. v. Smith*, 761 F.3d 699, 711 (7th Cir. 2014). It is not necessary to a finding of contempt that a violation was “willful.” Rather, it is sufficient that a party “has not been reasonably diligent and energetic in attempting to accomplish what was ordered.” *Goluba v. School Dist. of Ripon*, 45 F.3d 1035, 1037 (7th Cir.1995).

11. In this case, there is no doubt that the State has violated this Court’s August 18, 2015 Order, which unequivocally commanded the State to pay for services for Beneficiaries of the Consent Decree by August 21, 2015. The State has also continually since July 1, 2015 violated the Consent Decree and the Agreed Order.

12. Northern District of Illinois Rule 77.2(3) defines an emergency matter as “a matter of such a nature that delay in hearing it that would result from its being treated as any other matter would cause serious and irreparable harm to one or more of the parties to proceedings”

13. Any delay in hearing this matter would cause serious and irreparable harm to the Beneficiaries of the Consent Decree because service providers are in danger of closing if they do not immediately receive payment for July, 2015 services. (See Docket #602, Exhibits 4-10, 12 and 14) If any service providers are forced to close, then individuals in Illinois with Developmental Disabilities will be forced to relocate to unfamiliar and inappropriate settings, if such alternatives settings are even available, in violation of the Americans with Disabilities Act, Rehabilitation Act and Medicaid Law. It is therefore appropriate for this Court to treat this matter as an emergency.

WHEREFORE, Plaintiffs and Intervenors respectfully move this Court as follows:

- A. To issue a Rule to Show Cause why the State should not be held in contempt for violation of this Court's August 18, 2015 Order;
- B. To direct Felicia Norwood, Director of the Illinois Department of Healthcare and Family Services; James Dimas, Director of the Illinois Department of Human Services; and Leslie Munger, Illinois Comptroller to appear before this Court and provide an explanation as to why the State failed to comply with this Court's Order, and to provide a date certain in the immediate future when the State will fully comply before this Court holds them in civil contempt of court; and
- C. To award such other relief as the Court deems just and proper.

Dated: August 25, 2015

Respectfully Submitted,

For Intervenors

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