

1/19/01

53203D

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ERNAST HERMANSON ET AL.,

Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS
ET AL.,

Defendants.

CIVIL ACTION
NO. 00-CV-30156-MAP

RECEIVED

FEB 06 2001

NATIONAL CENTER
ON POVERTY LAW

FIFTH INTERIM AGREEMENT
IN LIEU OF A PRELIMINARY INJUNCTION

Plaintiffs seek to obtain a temporary restraining order and/or preliminary injunction on behalf of plaintiff Robert O'Donnell, a 65 year-old man, and Alice Grogan, an 88 year-old woman who is not a named plaintiff but would seek to intervene. Each of them lives at his or her home with personal care attendant ("PCA") services and seek to continue living there. Each of them asserts that he or she cannot continue to meet the deductible amount applied during each six-month period under Medicaid law to disabled persons aged sixty-five and over, and thus cannot continue to qualify for Medicaid or MassHealth payments for PCA services that are assertedly needed to continue living in a residential setting.

In order to address the issue of the recurring six-month deductible for Mr. O'Donnell and Ms. Grogan while this case is pending in the District Court, and thereby resolve their claims for a preliminary injunction, Defendants hereby agree that they will deem each of them to have met the six-month deductible while this case is pending, subject to their continuing obligations to meet all other requirements under federal and state law for MassHealth Standard eligibility. Defendants are thereby providing the same interim relief for Mr. O'Donnell and Ms. Grogan as Defendants previously agreed to provide for other persons under the First Interim Agreement.

In exchange for the provision of this interim relief, Mr. O'Donnell and Ms. Grogan agree not to file a motion for a preliminary injunction.

By entering into and complying with this Agreement, neither party waives any claims or defenses or makes any concession as to the merits of the opposing party's claims or defenses, and Defendants reserve their right to challenge whether Plaintiffs have met each of the requirements to maintain the present action as a class action under Fed. R. Civ. P. 23 and whether Ms. Grogan has the right to intervene.

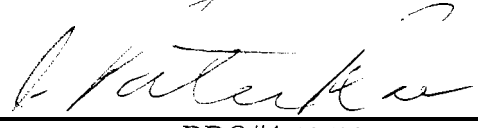
By entering into and complying with this Agreement, Defendants do not make any representation as to the adequacy or medical necessity of any living arrangements and services sought by Mr. O'Donnell or Ms. Grogan.

By entering into and complying with this Agreement, neither party waives its respective rights to seek or oppose any- form of preliminary relief for any person other than Mr. O'Donnell or Ms. Grogan or any form of permanent relief for any person.

Dated January 17, 2001

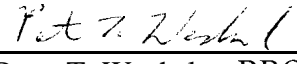
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By their attorneys,

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