

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

2009 DEC -2 PM 12:49

CLERK OF COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

JACQUELINE JONES,

Plaintiff,

v.

Case No.

3:09-cv-1170-f-34 ARK

THOMAS ARNOLD, in his official
capacity as Secretary, Florida Agency for
Health Care Administration, and

Dr. ANNA VIAMONTE ROSS,
in her official capacity
as Secretary, Florida Department of
Health,

Defendants.

**PLAINTIFF JACQUELINE JONES' MOTION FOR PRELIMINARY INJUNCTION
AND EXPEDITED HEARING AND MEMORANDUM IN SUPPORT**

Pursuant to Fed. R. Civ. P. 65, individual Plaintiff Jacqueline Jones, through her counsel, moves for a preliminary injunction to enjoin Defendants from denying her with Medicaid home and community-based services ("HCBS"), in order to prevent Plaintiff Jones's unnecessary and imminent institutionalization into a nursing home. Due to the emergency nature of her situation, Plaintiff Jones further moves for an expedited hearing. As grounds therefore, Plaintiff Jones states:

1. This action is brought on behalf of a Florida resident who is on Medicaid and has a severe disability that has paralyzed her. Plaintiff Jones desires to continue residing in her community instead of a nursing facility. She could reside in the community with appropriate

services provided with Medicaid funds. She is at imminent risk of being unnecessarily institutionalized because of Defendants' failure to administer their Medicaid services, programs and activities in an appropriate, integrated community setting.

2. Jacqueline Jones is a named plaintiff in this action. She was born on January 17, 1974, and is thirty-five years old.

3. Plaintiff Jones lives in her parents' fully accessible home in Jacksonville, Florida. She has resided with her parents since November, 1991. When she was 17 and a senior in high school, she broke her spine as a result of a car accident. The injuries left her paralyzed in her hands and from her breast area down through her feet.

4. Ms. Jones graduated from high school in 1993 and attended community college for two years.

5. Ms. Jones has quadriplegia. She uses a motorized wheelchair which enables her to ambulate.

6. Ms. Jones is a Jehovah Witness and in her wheelchair she is able to do her community ministry. She attends Kingdom Hall of Jehovah Witnesses twice a week and also conducts a bible study once a week at another person's home.

7. She goes out to dinner with friends, goes to the movies, and frequently goes to mall with friends. Miss Jones regularly visits friends for supper at their homes.

8. She receives Social Security Disability in the amount of \$505 a month and manages her own money.

9. Miss Jones' father is now 74 and her mother is 67. Since her accident, her parents have been her primary caregivers. As her parents have aged, their health has

deteriorated, and they can no longer provide the additional attendant services which Ms. Jones requires in order to continue residing in the community.

10. Ms. Jones is eligible for and receives Medicaid. For more than four years, Ms. Jones has applied for Florida's Medicaid home health services for persons who have a spinal cord injury, but Defendants have not provided her with any home and community-based services. Instead, defendants have placed her on a "wait list."

11. Due to her quadraplegia, Miss Jones requires assistance with activities of daily living, including transferring from her bed to her wheelchair and from the wheelchair back to her bed. She also requires assistance dressing, grooming, toileting, personal hygiene, and food preparation. These activities of daily living require numerous hours a day of assistance.

12. Miss Jones also requires assistance several times a day with her supra pubic urinary catheter and assistance several times a week for a bowel program. These activities require a number of hours per week of assistance. Plaintiff Jones does not require extensive nursing care or any other oversight. Any health care and services she requires has been and can be provided in the community.

13. In order to prevent decubitus ulcers, a dangerous breakdown of the skin, Ms. Jones should be turned twice a night.

14. From 1991, when she became paralyzed, until about 2007, Plaintiff Jones' parents, Mr. Jack Jones and Mrs. Charmaine Jones, were able to provide the assistance she required for these activities of daily living.

15. Several years ago, Mrs. Charmaine Jones was diagnosed with degenerative arthritis, which has gotten worse in the past year, and she was also diagnosed with an inoperable

tumor near her kidneys. She can no longer assist in transferring, bathing, dressing or bowel care for her daughter.

16. In the past year, Mr. Jones has developed back, shoulder and knee pains, all of which make it much more difficult for him to assist his daughter in dressing, turning at night and transferring.

17. For the past eight months, Medicare has paid for a home health aide three times a week for one hour each session. This is insufficient. Ms. Jones requires much more assistance with activities of daily living.

18. Plaintiff Jones initially applied to Defendants for Home and Community-Based Medicaid Waiver services on July 15, 2005.

19. On June 6, 2006, Defendants conducted a telephone interview of Miss Jones during which they completed a "Priorization Screening Instrument." Defendants issued a Notice of Decision which stated: "No openings at this time. We will be calling you from time to time. Meanwhile, please keep us advised of changes to your condition or situation."

20. In the June 6, 2006 Notice, Defendants noted that Ms Jones was not "at risk of nursing home placement within the next 30 to 60 days."

21. On March 7, 2007, Defendants conducted another telephone interview of Miss Jones during which they completed a second "Priorization Screening Instrument." Defendants' March 7, 2007 Notice of Decision stated: "No openings at this time. We will be calling you from time to time. Meanwhile, please keep us advised of changes to your condition or situation."

22. In the March 7, 2007 Notice, Defendants wrote that Miss Jones had been “placed on the TBI/SCI [Traumatic Brain Injury/Spinal Cord Medicaid] Waiver waiting list: Date of Referral: 7-15-05.”

23. In this Notice, Defendants noted that Ms Jones was not “at risk of nursing home placement within the next 30 to 60 days.”

24. On July 28, 2009, Defendants sent Ms. Jones another “Notice of Decision” which stated “You have been placed on the TBI/SCI Waiver waiting list” and “No openings at this time. We will be calling you from time to time. Meanwhile, please keep us advised of changes to your condition or situation.”

25. On October 8, 2009, Defendants conducted a third telephone interview of Miss Jones during which they completed the third “Priorization Screening Instrument.” Defendants’ October 8, 2009 Notice of Decision stated: “No openings at this time. We will be calling you from time to time. Meanwhile, please keep us advised of changes to your condition or situation.”

26. However, on the October 8, 2009 “Priorization Screening Instrument.” Defendants noted that Ms. Jones was “at risk of nursing home placement within the next 30 to 60 days.”

27. Despite Defendants knowing that Ms. Jones was at imminent risk of institutionalization, they have not offered her any Medicaid services so she could remain in the community.

28. Ms. Jones has been eligible for Florida’s Medicaid nursing home services since she broke her spine in 1991. She still meets Florida’s level of care for nursing home eligibility.

29. If Ms. Jones were to enter a nursing home, Florida's Medicaid nursing home reimbursement is approximately \$178 per diem.

30. Defendants have a community-based Medicaid Traumatic Brain Injury/Spinal Cord Medicaid Waiver but has limited the number of slots to 375.

31. Defendants have certified to the federal Medicaid agency, the Centers for Medicare and Medicaid Services, that for each person Florida diverts from the nursing home and provides Waiver services in the community, the State and the federal government save approximately \$20,000 a year.

32. Despite these savings and knowing that Plaintiff Jones is in imminent risk of nursing home placement, Defendants have refused to provide Miss Jones with services in her home.

33. Plaintiff Jones needs Defendants' Medicaid HCBS benefits and assistance with activities of daily living. These services could be provided to Plaintiff Jones either pursuant to "waiver" services or "personal care services," *see* 42 U.S.C. §§1396n(c) and 1396d(a)(24), both of which are part of the Florida's Medicaid program. Unfortunately, waiver services have not been made available to Plaintiff Jones, even though she applied for home and community-based services and is on a waiting list. The personal care option service is limited in Florida to persons with disabilities who reside only in assistive living facilities – not their own apartments or houses.

34. To obtain the necessary services, Defendants require that Plaintiff Jones leave the community and enter a Medicaid-funded nursing facility setting. Defendants' Medicaid program will only provide the services she requires by paying for her institutionalization in a nursing

facility.

35. Plaintiff Jones will imminently have no option other than to enter into a nursing home where Defendants' Medicaid program will pay for the same services she can and has received in the community.

36. Defendants' refusal to offer her the services in the community and instead require her to enter a nursing facility to receive the same services violates both the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. ("ADA"), and the Rehabilitation Act of 1973, 29 U.S.C. § 794a ("Section 504"), and their implementing regulations, in particular the "integration mandate," which requires that "a public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d).

37. Counsel for Plaintiff Jones consulted with Defendants' counsel and requested services for Plaintiff Jones, but no services have been provided.

38. Jacqueline Jones telephoned Defendants' Jacksonville Medicaid Waiver office regarding waiver services, but none have been provided and no one could tell her when services would be provided for her in the community.

WHEREFORE Plaintiff Jones seeks a preliminary injunction to enjoin Defendants from denying her services in the community to assist her with her daily living activities.

Respectfully submitted,

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