

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

MARKETRIC HUNTER, a minor child,  
by and through his mother and legal  
guardian, THELMA LYNNAH,

Plaintiff,

vs.

RHONDA MEDOWS, in her Official  
Capacity as Commissioner of the  
DEPARTMENT OF COMMUNITY  
HEALTH, and GEORGIA MEDICAL  
CARE FOUNDATION, INC., a Georgia  
corporation,

Defendants.

CIVIL ACTION FILE NO.  
1:08-CV-2930-TWT

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**ORDER ON PLAINTIFF'S MOTION  
FOR TEMPORARY RESTRAINING ORDER**

This is an action for injunctive and declaratory relief in which the Plaintiff claims that the Defendants are violating his rights under the EPSDT provision of the Medicaid Act, 42 U.S.C. § 1396d(r). Before the Court is the Motion of Plaintiff Marketric Hunter, a minor child, by and through his mother and legal guardian, Thelma Lynnah, for a Temporary Restraining Order pursuant to Fed.R.Civ.P. 65(b). Plaintiff's Motion was filed on September 18, 2008,

contemporaneously with his original Verified Complaint, Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction and Affidavit of Saad Hammid, M.D. The Court scheduled a hearing for September 22, 2008, at 11:00 a.m., at which time the Court heard argument from counsel for all parties.

The provisions of law which govern this matter are set forth in this Court's Order in *Moore v. Meadows*, 563 F.Supp.2d 1354 (N.D.Ga. 2008). That order provides in pertinent part:

The [Medicaid] Act now mandates that states which participate in the Medicaid program provide "early and periodic screening, diagnostic and treatment services" as needed "to correct or ameliorate defects and physical and mental illnesses." 42 U.S.C. § 1396d(r)(5). Providing the necessary services for those under the age of 21 is not optional for a state; the appropriate care must be provided "whether or not such services are covered under the State plan." *Id.* The Court of Appeals for the Eleventh Circuit has held that: "The language of subsection (r)(5) appears to mandate coverage for all medically necessary treatment for eligible recipients under age twenty-one." *Pittman v. Secretary, Florida Dept. of Health and Rehabilitative Services*, 998 F.2d 887, 889 (11<sup>th</sup> Cir. 1993). The state has no discretion to deny funding of medically necessary treatment. *Id.* at 892. Private skilled nursing is an enumerated category of treatment under the Medicaid Act. 42 U.S.C. § 1396d(a)(8).

The only pertinent inquiry is the amount of nursing hours "necessary...to correct or ameliorate" the Plaintiff's condition. 42 U.S.C. § 1396d(r)(5).... The state must provide for the amount of skilled nursing care which the Plaintiff's treating physician deems necessary to correct or ameliorate [the Plaintiff's] condition. *Id.*, 1356-57

There is no claim by the State that there is any fraud or other suggestion that Plaintiff's treating physician, Dr. Hammid, is not a competent and professional physician who honestly and in good faith has prescribed 168 hours per week of nursing care for the Plaintiff.

Based upon the pleadings and evidence before the Court, and the arguments of the parties' counsel, the Court finds that Plaintiff has a substantial likelihood of success on the merits, there is a danger of irreparable injury to Plaintiff, the balancing of equities favors the Plaintiff, and it's in the public interest that the Plaintiff receive the treatment that his pediatrician has prescribed pending further review of the matter by the Georgia Medical Care Foundation and further consideration by the Court of the Plaintiff's request for relief. Having so found, the Court GRANTS Plaintiff's Motion for a Temporary Restraining Order and hereby ORDERS as follows:

1. Defendant Rhonda Medows, in her official capacity as the Commissioner of the Department of Community Health, is hereby enjoined from denying the request of Plaintiff's treating physician for 168 hours per week of private duty nursing services from 12:00 p.m., September 22, 2008, until the scheduled hearing on Plaintiff's Motion

for a Preliminary Injunction which Motion has scheduled for 11:00  
a.m., September 29, 2008.

2. Plaintiff is not required to provide any bond or security.

SO ORDERED this 22<sup>nd</sup> day of September, 2008.

THOMAS  
UNITED

/s/Thomas W. Thrash

W. THRASH, JR., JUDGE  
STATES DISTRICT COURT

Prepared and presented by:

s/ Joshua H. Norris

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